IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 23501 of 2007(W)

PETITIONER:

JAFFER, AGED 20 YEARS,
S/O.MOIDEENKUTTY, PERUMPALA HOUSE,
ALIPARAMBA AMSOM & KAMPRAM DESOM OF
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.MUHAMMED SALAHUDHEEN

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. SECRETARY TO GOVERNMENT,
HOME DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

3. DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

4. SUPERINTENDENT,
CENTRAL BUREAU OF INVESTIGATION,
ERNAKULAM.

5. THE CIRCLE INSPECTOR OF POLICE,
PERINTALMANNA, MALAPPURAM.

R4 BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
R1 TO 3 & R5 BY GOVERNMENT PLEADER SRI. M.S. BREEZ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 23501 of 2007 W

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Dated this the 29th day of October, 2007

JUDGMENT

This Writ Petition is filed by the petitioner, who faces allegations in a crime registered for offences punishable, inter alia, under Section 302 I.P.C. The victim is a married woman. She has three children. Her husband was employed elsewhere. He used to make only weekly visits. On one day, when her husband was at his place of work and the three children had gone to the school, she was found dead inside the house. She had injuries on her, including a cut injury on the throat. Initially the crime was registered under the caption 'unnatural death'. It was subsequently altered, inter alia, under Section 302 I.P.C. Initially there was no clue of the accused person. But in the course of investigation, the petitioner has been arrayed as an accused. He has been arrested. His application for bail was dismissed by this Court as per order dt. 18.7.2007 in B.A.No. 4344 of 2007.

2. The petitioner has now come to this court with a prayer that the investigation into this crime may be entrusted with the 4th

respondent, C.B.I. According to him, no proper investigation is being conducted by the Investigator presently in charge of the investigation. He is making assumptions and presumptions and is proceeding against the petitioner. The petitioner is innocent. The father-in-law of the deceased woman is the real culprit. He is attempting to place the blame at the doors of the petitioner. In these circumstances powers under Section 482 Cr.P.C./Article 226 of the Constitution may be invoked and direction may be issued directing the C.B.I. to continue the investigation.

3. The petitioner is the nephew of the father-in-law of the deceased. I do not in fact want to narrate the case advanced by the petitioner in this writ petition, as I find that there are several statements against his own interests made in the writ petition and in the course of submissions made at the Bar. Suffice it to say that in the nature of the contentions raised, I have anxiously gone through the entire case diary. The Investigating Officer relies on certain circumstances, which include:

(1) that the petitioner was found near the scene of the crime at about the relevant time when the death must have occurred;

(2) that the petitioner is a person closely known to the deceased and it was unlikely that the deceased would have opened the doors of her house to admit any stranger;

(3) that the deceased was found lying dead inside the house with injuries and the kitchen door was seen closed and bolted from outside;

(4) that there were certain blood drops outside the closed door of the kitchen;

(5) that the accused had some injuries on his hand, for which he had no proper explanation and for which he gave a false explanation;

(6) that the injuries found on the person of the petitioner could have been caused by the very same weapon with which the deceased suffered the injuries.

(7) After the arrest, the petitioner allegedly made a confession statement, which led to recovery of the gold chain, which the deceased was wearing at the time of occurrence and which were found missing.

(8) The person/establishment, from whom the recovery was effected, stated that it was the accused, who brought the same for pledging and received money. A portion of the money was used by him to redeem a ring of his wife pledged earlier.

(9) The petitioner, who was hard pressed for money had pledged the same and redeemed the same on the date of the occurrence; and

(10) The accused, who was hard pressed for money, had handed over an amount of Rs.4,000/- to a relative of his for expenses of the marriage of her daughter on the date of occurrence.

4. The petitioner has explanations for the above circumstances. It is his contention that his uncle i.e. the father-in-law of the deceased is the real villain of the crime. He has a further contention that the injury suffered by the deceased could not have been caused with the weapon which the Investigating Officers have now seized.

5. Having considered all the relevant circumstances and the contentions urged and having perused the case diary, I find absolutely no circumstance, which can justify the prayer for invocation of the extra ordinary constitutional jurisdiction under Article 226 of the Constitution or the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. to direct that the investigation be taken away from the present Investigating Officer and entrusted to the C.B.I. I am satisfied that the petitioner must be directed to raise all the defences that he wants to raise in his trial, if ultimately he is charge sheeted. I need only observe that the Investigator

must pointedly advert to and consider the circumstances which the petitioner has chosen to advance in his defence. The Investigator must consider whether there is any merit in the contentions raised by him in this writ petition, to which I am not choosing to make detailed reference now, considering their nature and the possible adverse impart on the petitioner himself.

6. This Writ Petition is accordingly dismissed.

(R. BASANT)
Judge

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